

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RICHARD M. STALLINGS, Administrator of the Estate )  
of RICHARD R. STALLINGS, Deceased, )

Plaintiff,

V. )

NO. 06-4078-JPG

THE BLACK & DECKER CORPORATION, a foreign corporation, formerly known as THE BLACK AND DECKER MANUFACTURING COMPANY, and BLACK & DECKER(U.S.) INC., a foreign corporation,

## Defendants.

## MOTION FOR SUMMARY JUDGMENT

Now comes the defendant, The Black & Decker Corporation, by and through its attorneys, C. Barry Montgomery, Edward J. Murphy, Williams Montgomery & John Ltd., James J. Bleyer, and Bleyer and Bleyer and moves this Honorable Court pursuant to Federal Rule of Civil Procedure 56(b) for summary judgment in its favor and against the plaintiff. In support of this motion the moving defendant states as follows:

1. The plaintiff has filed a Second Amended Complaint, sounding in negligence and strict liability, seeking compensatory damages for the death of Richard R. Stallings on April 17, 1991. Two defendants are named, The Black & Decker Corporation and Black & Decker (U.S.) Inc. The plaintiff alleges that at the time of his death Richard R. Stallings was using a circular saw and that the saw was unreasonably dangerous and/or negligently designed by its manufacturer. The Black & Decker Corporation is entitled to summary judgment in its favor for two reasons:

(a). It did not manufacture the saw which Richard R. Stallings was allegedly

using on April 17, 1991; (it was, in fact, manufactured by the other defendant, Black & Decker (U.S.) Inc. and

(b). The action against The Black & Decker Corporation was not brought within the applicable limitations period provided by Illinois law.

2. In support of this motion the moving defendant offers the following exhibits attached hereto:

Ex. 1, April 13, 1993. Plaintiff's original complaint filed in Williamson County, Illinois Court against defendants Black & Decker Inc. and Gilbert Stallings.

Ex. 2, January 4, 1995. Record sheet, Williamson County, Illinois, order approving dismissal of defendant, Gilbert Stallings, pursuant to settlement.

Ex. 3, March 20, 1997. Amended Complaint filed in Williamson County, Illinois against Black & Decker Inc.

Ex. 4, February 6, 2001. Plaintiff's "Second Amended Complaint with Jury Demand" filed in the Williamson County, Illinois court, against defendants Black & Decker Inc. and Black & Decker (U.S.) Inc.

Ex. 5, January 8, 2002. Record sheet, Williamson County, Illinois, docket entry by Judge Eckiss allowing plaintiff to amend his complaint to delete "Black & Decker, Inc.".

Ex. 6, April 1, 2005. Record sheet, Williamson County, Illinois, showing docket entry by Judge Eckiss dismissing the plaintiff's complaint "without prejudice".

Ex. 7, March 22, 2006. Plaintiff's (re-filed) "Complaint with Jury Demand" filed in Williamson County, Illinois.

Ex. 8, June 27, 2006. Plaintiff's First Amended Complaint filed with this Court (after removal from the Williamson County, Illinois court) against "Black and Decker Inc., a foreign corporation, formerly The Black and Decker Manufacturing Company, and Black and Decker (U.S.) Inc., a foreign corporation."

Ex. 9, July 17, 2006. Plaintiff's Second Amended Complaint filed with this Court against "The Black & Decker Corporation, a foreign corporation, formerly known as The Black & Decker Manufacturing Company, and Black & Decker (U.S.) Inc."

Ex. 10, August 3, 2006. Defendant Black & Decker (U.S.) Inc.'s answer to the Second Amended Complaint.

Ex. 11, August 3, 2006. Defendant The Black and Decker Corporation's answer to the Second Amended Complaint.

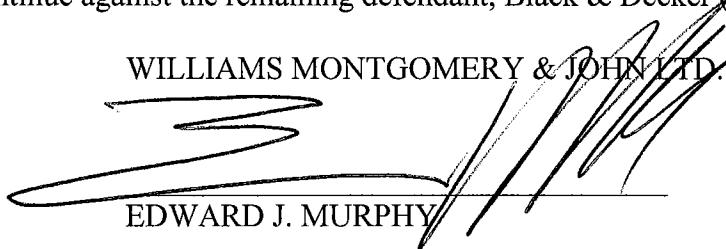
Ex. 12, August 8, 2006. Affidavit of William Bruner III.

Ex. 13, April 30, 1997. Affidavit of C. L. Gough.

The moving defendant also offers its Memorandum of Law in Support of this Motion.

3. Upon review of this Motion, the movant's Memorandum of Law and the attached exhibits the Court will see that there is no genuine issue as to any material fact as to the liability of the moving defendant, The Black & Decker Corporation, and that, therefore, the movant is entitled to judgment as a matter of law.

WHEREFORE, the moving defendant, The Black & Decker Corporation, asks that this Honorable Court enter an order entering summary judgment in its favor and against the plaintiff and allowing the case to continue against the remaining defendant, Black & Decker (U.S.) Inc.

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of RICHARD R. STALLINGS, Deceased,                      )  
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Plaintiff,    )  
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v.    )    NO. 06-4078-JPG  
    )  
THE BLACK AND DECKER MANUFACTURING                    )  
COMPANY, a foreign corporation, and BLACK AND        )  
DECKER (U.S.) INC., a foreign corporation,            )  
    )  
Defendant.    )

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2006 I electronically filed the attached document with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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s/Edward J. Murphy

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